BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PAUL A., Claimant, vs. GOLDEN GATE REGIONAL CENTER, Service Agency.	OAH No. 2010120005

DECISION

Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 8, 2011, at San Francisco, California.

Russell K. represented claimant Paul A.

Richard D. Boyd, Ph.D., represented the Golden Gate Regional Center (service agency or regional center).

On March 8, 2011, the parties submitted the matter and the record closed.

ISSUE

Within the meaning of the Lanterman Act is claimant Paul A. eligible to receive services and supports through the service agency?

FACTUAL FINDINGS

1. Paul A. (claimant or Paul A.) was born in June 5, 1963. Currently he is 47 years old.

Procedural Background

2. In early 2010, claimant's friend, Russell[1] K., contacted service agency regarding the provision of services and supports for the benefit of claimant. Despite the existing protocol of the service agency that telephone in-take interviews be conducted, claimant refused to participate in such an interview. Thereupon the service agency promptly scheduled an in-office intake appointment with a service agency staff social worker. On April 21, 2010, Ms. Michelle Dolar, L.C.S.W, a social worker with service agency, conducted an interview[2] of claimant, who was accompanied by Russell K. On July 28, 2010, and October 28, 2010, Theresa M. Keyes-Osantowski, M.D., a staff physician with service agency, met with claimant to gather a medical history, to examine claimant and to form clinical impressions regarding claimant's conditions. Then on October 28, 2010, Neil A. Hersh, Ph.D., a staff psychologist with service agency, issued a psychological review report regarding claimant. On November 2, 2010, Felice Weber Parisi, M.D., Director of service agency's Clinical Services, sent a letter to claimant, care of Russell K., notifying them that based upon the recommendation by the service agency's interdisciplinary team, claimant was determined not to meet the statutorily prescribed criteria for eligibility to receive regional center supports and services. On November 30, 2010, Russell K., acting for Paul A., filed a Request for Fair Hearing. Also on the last day in November 2010, Russell K. sent a letter to service agency's executive director complaining about the interdisciplinary team and disputing their objectivity. On December 9, 2010, an informal meeting was conducted between Russell K. and service agency's personnel; but the meeting did not resolve Russell K.'s objections to the denial of Paul A.'s eligibility. On December 9, 2011, Russell K. signed the Department form titled "Waiver of Time Set by Law for Lanterman Act Fair Hearing and Decision." The matter proceeded to hearing on March 8, 2010.

Claimant's Background

3. The records pertaining to claimant, who is now 47 years old, are essentially non-existent for records regarding health care and educational issues and endeavors before claimant attained the age of 18 years. But the health care practitioners in recent years have consistently indicated the following:

Claimant was born in 1963 at Saint Luke's Hospital in San Francisco. Claimant has conveyed that his mother told him that he was nearly born "dead," and spent several months hospitalized after his birth.

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[1] Russell K. is the payee for Paul K.'s Supplemental Security Income (SSI).

[2] At the April 21, 2010, interview, Ms. Dolar met claimant and Russell K. in a waiting room. Claimant immediately protested the presence of Russell K. in the interview meeting. But because she understood Russell K. had arranged for claimant's application for regional center services and supports, Ms. Dolar invited Russell K. into the office. Yet because of the continued objections by claimant, within five minutes of the beginning the meeting Russell K. exited the interview room.

When he was approximately four years old, claimant sustained an eye disorder that resulted in him being blind in this left eye. (He reports that his blinded eye was infected by a microscopic germ that was contacted from an animal.) Currently he has contracted glaucoma in his "good" eye so that his vision is markedly impaired.

When he was eight years old, an automobile struck him as he rode a bicycle. According to his account, he was in a coma for six weeks. (That injury is the first known head trauma sustained by claimant.)

As a child, claimant lived with his mother and a stepfather. But, his mother died when claimant was 16 years old. The claimant lived at times with his grandmother.

Claimant recalls being treated by psychiatrists when he was a child and that he participated in group therapy for "kids having problems." The records suggest that claimant had poor anger control issues as a youth.

Claimant was enrolled in public schools, including Patrick Henry Elementary School and Turnbull Middle School in San Francisco. He attended San Mateo High School. In the 9th or 10th grade, he was placed in special education classes. (One medical note indicates that he "was placed in special education classes for the learning disabled after the second grade.") He dropped out of high school when he was 17 years old. He never earned a General Equivalency degree (GED), because he experienced difficulty comprehending classroom matters.

After dropping out of high school, claimant ran away from home and lived with a friend. He returned home at age 18 years upon receiving a settlement award from a lawsuit that stemmed from the bike versus car mishap that had caused him injuries when he was eight years old. The settlement money was soon exhausted as no one properly managed the money for claimant.

As a young adult, claimant secured several jobs. He worked at Jim's Donuts for a couple of months. Then he worked for Jack-in-the-Box restaurant for a few months. Later he delivered "cheese and butter to churches." Through the Teamsters' labor union, claimant worked loading and unloading trucks for about three or four years. His worked for a few years unloading frozen meat containers for a refrigerated trucking company. Then he worked as an "errand boy" for seven years in Marin County.

But the time he reached his 30th birthday, claimant no longer was employable and he became homeless. Initially he lived in the Marin County hills for several months. He then traveled with a friend to the Eureka and Arcadia areas of Humboldt County, where he remained homeless. By some unknown date, claimant returned to reside in San Francisco.

During a lengthy part of his adult life, claimant has used many illegal drugs and controlled substances. He has ingested "crystal meth," or "speed" (methamphetamine). Claimant has consumed heroin and he claims that he had almost died on three occasions due to overdosing with that drug. He has used an excessive amount of alcohol to the point that he has

significant liver disease, including Hepatitis-C. (Claimant's abuse of alcohol has been so great that he has sustained multiple arrests and jail confinements; and he reports once being jailed for seven weeks because of "shouting" at a police officer. And due to his drunken behavior, he has been injured in fights, including being severely hit in the head on an unknown number of occasions.) Claimant recalls suffering between one and three seizures, which were attributable to his ingestion of alcohol and/or drugs. In recent years, claimant has used medical marijuana to treat headaches that occur behind his blind eye.

As noted above, claimant has reported that he has sustained many head injuries. In about 2003, claimant was the victim of a beating where another man hit him in the head several times so that he suffered with marked dizziness for three weeks. Claimant has had numerous "5150" holds so that law enforcement personnel have taken him into custody for periods of observations at locked psychiatric facilities when claimant showed that he had a tendency to be a danger to himself of others.

By reason of mental illness diagnoses, claimant has been granted Social Security Income eligibility. His payee, Russell K., doles out $5 each day for claimant's use.

Diagnostic Criteria

4. Mental retardation is defined as significantly subaverage cognitive functioning, together with concurrent deficits or impairments in present adaptive functioning (the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least three of the following areas: Communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety, all of which have an onset before the age of 18.

Under the fifth category, the Lanterman Act provides assistance to individuals with a condition "closely related to mental retardation" or who require "treatment similar to that required for individuals with mental retardation." In *Mason v. Office of Administrative Hearings* (2001) 89 CalApp.4th 1119, 1129, the California Court of Appeal held that the fifth category was not unconstitutionally vague and set down a general standard: "The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded."

Claimant's Documentary Support

5. Claimant offered records from health care professionals as well as antidotal correspondence that was written by claimant's long-term acquaintances to support the claim that he is afflicted with mental retardation

a. Records by Fred Rozendal, Ph.D., Stephen Goodman, M.D. and medical personnel at the Community Health Network, San Francisco General Hospital Medical Center.

6. On February 4, 2004, Fred Rozendal, Ph.D., prepared a psychological evaluation report regarding claimant, who was then 40 years old. The psychologist tested and met with claimant on January 15, 19, and 23, 2004. Test results of claimant were interpreted by Dr. Rozendal to indicate claimant was "functioning in the 'Extremely Low' or Mild Retardation range of intelligence *or slightly above. . . .* [Scores were] consistent with his reports of being in special education classes in childhood, and are not significantly different." (Emphasis added.) Beyond determining claimant to be "mildly mentally retarded," Dr. Rozendal found claimant to have organic mental deficits; very weak and erratic verbal comprehension and that he appeared to "suffer from a psychotic process. Dr. Rozendal set out Diagnostic impressions as: "Axis I: Mild Mental Retardation; Organic Mental Disorder with damage to memory, mental clarity and mental speed; Psychotic Disorder not otherwise specified, with delusional and/or hallucinatory thinking; Depression; History of Polysubstance Use, in remission currently."

In April 2004, a progress note from records of the Community Health Network, San Francisco General Hospital Medical Center (Community Health Network) recorded a psychiatric consult entry. Claimant's problems were perceived to be affected by "anxiety, depressive mood, cognitive deficits with history of learning disability." The note ends with a comment that it was "very likely [claimant's] cognitive difficulties represent[ed] a longstanding problem . . . [history of] child birth and, later, a head injury [with] skull [fracture]. [Claimant's] anxiety and depressive symptoms remain active and very likely worsen with [increased] stress . . . ."

In June 2004, a consultation report, which was addressed to the Psychosocial Medicine unit at the Community Health Network, described claimant as having provisional diagnoses of "cognitive disorder not otherwise specified; depressive disorder not otherwise specified and mood disorder due to multiple head injuries, with depressive features" under Axis I. Claimant was noted to have "schizotypal personality disorder" under Axis II. And under Axis III, claimant was noted to have a history of "multiple head injuries, blindness in right eye and 'Hep C+.'" The case history, dated June 2, 2004, set out, in part, that claimant "presents with depressive [symptoms] and a recent suicide attempt stemming from problems with cognition *secondary to multiple head traumas and other related psychosocial stressors*. He reports experiencing [symptoms] of depression throughout his lifetime, which have *worsened over the past [four to five] years after his grandmother and other family members moved away or died* . . . . Because [claimant] exhibits odd and eccentric ideas of preoccupation (with some insight to his tendency to escape into fantasy world), [the Community Health Network's] clinician will also want to rule out Schizotypal Personality [disorder]. . . . (Emphasis added.) Other strengths include his kind and sensitive attitude towards others, and willingness to ask for help through mental health services." On September 10, 2004, claimant was recorded as having "dropped out" of the Community Health Network's mental health treatment program. The last diagnosis made as of September 2004 by the Community Health Network for Claimant were: "cognitive disorder not otherwise specified" under Axis I; "schizotypal personality disorder" under Axis II; and, "multiple head injuries" under Axis III.

On December 11, 2007, Stephen Goodman, M.D., authored a psychiatric consultation report regarding claimant, who was then 43 years old. Dr. Goodman noted claimant's problems to include "1. Psychosis NOS" and "3. Mild mental retardation." The note refers to claimant beginning contact with the Community Health Network in April 2003, when claimant was approximately 40 years old. Dr. Goodman's entries suggested that claimant suffered from a psychotic disorder as claimant "relates a number of eccentric . . . ideas including that his roommate is using a type of witchcraft against him . . . that [there is] hypnotic powder hidden in the lids of coffee cups." He told the psychiatrist of his concerns "in an almost giddy manner - [because] he does not seen troubled by these ideas." Dr. Goodman found claimant "with very limited insight as to his mental health problems though he asked [Dr. Goodman] a [number] of times, "Do you think I'm crazy?" Dr. Goodman opined, "very likely that [claimant's] primary psychiatric problems reflect underlying psychotic processes combined with mild mental retardation with/without substance component. [Claimant's] personality structure may fall in the schizotypal category.

In October 2010, Dr. Goodman made assessments of claimant as: "(1) chronic hepatitis C; (2) severe visual loss in left eye with glaucoma; [and] (3) psychiatric disorder – depressive schizo affective [disorder]." But in the October 2010 report, Dr. Goodman did not observe that mental retardation affected claimant.

On November 17, 2010, Howard Rubin, M.D., of the Potrero Hill Health Clinic, Psychiatry unit, wrote a progress note pertaining to claimant. Claimant was described as being a "47 [year old] man with chronic psychosis." Dr Rubin noted that claimant's

> Presentation . . . is most notable for loosening of associations: fluent speech in which he moves from one topic to another, sometimes with little connection between the topics. He has difficulty [giving] straightforward answers . . . and [clamant] quickly riffs on religious an political concerns. When asked about his mood, he responds, 'the moon is mother Mary, the sun is a mirage of a volcano. The fire is the dragon protecting her . . . . He is mildly grandiose, odd, and expansive: 'The world is dung and [G]od is a mammoth elephant.'

Dr. Rubin noted claimant's visit in December 2007 when diagnoses included "mild mental retardation" and claimant had undergone "neuropsych testing" in 2004 (that is Dr. Rosendal's testing), which suggested diagnoses impacting claimant as: "mild mental retardation, organic mental disorder, psychosis not otherwise specified and depression." Yet the impressions acquired by Dr. Rubin differed in November 2010 from the determinations made in December 2007. Dr. Rubin's recent impressions of claimant included: a "chronic psychotic disorder, concomitant substance use, and organic brain deficits which made diagnosis challenging. It is likely that his substance use exacerbates any pre-existing thought disorder. [And that marijuana] use today is making him seem more psychotic than he is at baseline, though his presentation may be his current baseline!" The Axis I conclusion was "rule out schizophrenia; Alcohol abuse; [marijuana] use; [and] developmental delays."

b. Writings by Claimant's Acquaintances and Friends

7. Russell K. in completing service agency's "Application for Ongoing Regional Center Services" form, dated April 20, 2010, wrote that claimant is "retarded who treats his mental illness [with] alcohol . . . ." Also Russell K. in the application noted that claimant has had "numerous hospitalizations due to getting beaten up while drunk [and] many 5150s.' " Further claimant's friend noted that claimant "has had a nervous breakdown, had seizures, born [with] guts hanging out, hit by a car, lost an eye due to childhood illness, has glaucoma in good eye." To the question: "at what age, and why did you first become concerned?," Russell K. suggested no personal knowledge of claimant's conduct before claimant was 18 years old. Rather, claimant's friend set out that "after [nine] years of watching [claimant] waste away from neglect [Russell K.] decided [to] take action because obviously no one else cares." It may reasonably be inferred that claimant was about 38 years old when Russell K. met the impaired man and became to observe his behavior. And it is not clear when Russell K. became the payee for claimant's SSI stipends.

In an email message, dated December 31, 2010, Russell K. wrote that Claimant "is the poster-child for mental retardation . . . . He is mildly retarded [and] insane . . . . He is and has been mentally retarded as mentally retarded can be and he has the social, legal, academic and medical histories to prove it." Russell K., however, did not provide competent and credible evidence that claimant is afflicted with mental retardation.

8. Russell K. offered letters from three other persons[3] who believe claimant is afflicted with mental retardation. But none of those letter authors indicate any training, education or clinical experience with rendering a diagnosis regarding mental retardation. And none of the letter writers indicate that any such person was familiar with claimant before he reached 18 years of age.

Service Agency's Assessment and Evidence in Support of the Determination Regarding Claimant's Ineligibility for Regional Center Services

9. Through the course of service agency's assessment, the subject regional center based its determination of claimant's condition on the considered opinions of Michele Dolar, staff social worker; Neil Hersh, Ph.D, a psychologist; and Theresa Keyes Osantowski, M.D., a medical doctor. And at the hearing of this matter each of those three professional care providers offered credible, persuasive and compelling evidence.

The records review by the three competent professionals showed claimant's cognitive functioning to be in the average to below-average ranges, which is not consistent with mental retardation. The individual regional center's professional staff personnel's analysis of claimant, as derived through their respective interviewing of him and their respective scrutiny of pertinent

[3] A letter, undated, by Thomas Jones; a letter, dated December 26, 2010, by Jim Serrata, Past Master, Francis Drake Lodge #376, Free and Accepted Masons; and a letter, undated, by Anthony Gil.

records, led each evaluator to form an opinion. The respective opinions concluded that claimant has as his dominant impairments not only psychiatric maladies but also disorders resulting from a long-term history of abuse of alcoholic beverages and illegal drugs or controlled substances.

Ms. Dolar's encounter with claimant at their initial meeting in April 2010 began with claimant's strenuous objection to his friend, Russell K., being present during the interview. And after the friend exited, Ms. Dolor's was struck by claimant's insistence that Russell K. had left his "listening parts" in the room. Throughout the interview, claimant asserted that Russell K. could hear him because the other man had left his coffee cup. Ms. Dolar noted that claimant laughed inappropriately and he experienced difficulty staying on topic. Despite the mental disorder that affected him, Ms. Dolar found that claimant used "a relatively sophisticated vocabulary" as he used words generally not used by persons affected by mental retardation. During the interview with Ms. Dolar, claimant articulated "a number of fantastical beliefs," including that he "has died eight times," that he had participated in "all the world's wars," that Russell K. had left his "listening parts" in the room, and that Russell K. was a "black magic woman." Ms. Dolar was very clear regarding her observations of claimant's disordered thinking during her interaction with claimant. At the hearing of this matter, Ms. Dolar provided additional details regarding the assessment she formulated about claimant through her meeting with him. She acknowledged that it was very challenging to elicit a concrete history from claimant due to the invasiveness of his delusions, and his thought processes.

Dr. Keyes-Osantowski met claimant on July 28, 2010, and again on October 28, 2010. At their meetings, Dr. Keyes-Osantowski was taken by claimant's extraordinary comments, such as he was fearful of public restrooms because such area had manifested "DNA war for years"; that telephone companies could "capture your voice"; coffee "messes with my body temperature"; the San Francisco Municipal Transit agency "collects the smell of your internal organs"; his dentist was "stealing his saliva" and that his friend, Russell K., was an "imposter." Dr. Keyes-Osantowski formulated assessments regarding claimant as involving: (1) a cognitive potential within the average range during his development period; (2) a possible learning disability; and (3) substance abuse and delusional thought processes. At the hearing of this matter, Dr. Keyes-Osantowski poignantly provided a grave overview of the damage to claimant because of Hepatitis-C. That serious liver infection, which is progressive and not curable, not only may lead to cirrhosis of the liver and liver failure but also to the long-term progression of the disease's final phase that involves the patient's confusion, lethargy and delusional affect. The medical doctor expressed that claimant's apparent non-compliance with medical care professional instructions to treat his active infection suggests he may suffer from cognitive deficits due to the grave liver disease. Like Ms. Dolar, Dr. Keyes-Osantowski was impressed with claimant's vocabulary, which did not suggest mental retardation. The medical doctor determined that claimant did not suffer from any condition that would render him eligible for regional center services and supports.

Dr. Hersh on October 28, 2010, wrote a report titled "Psychological Review for Eligibility" that pertains to claimant. Dr. Hersh administered the Werchsler Abbreviated Scales of Intelligence. The psychologist wrote that claimant's "frequent episodes of delusional thinking" interfered with other testing on the verbal subscale. The non-verbal subscale testing,

despite claimant's thought disorder, led Dr. Hersh to estimate claimant's IQ at 78, which is "between low average and borderline intellectual function ranges." And the psychologist opined that "78 [was] to be a low estimate of his true intellectual capacity." In the "discussion" portion of his report, Dr. Hersh noted that applicant was able to function independently after he dropped out of high school when he was 17 years old. Now claimant is disabled by reason of mental health conditions (psychosis, substance abuse, medication non-compliance). Also his mental health conditions currently "may interact with neuro-behavioral dysfunction" difficulties that were acquired by claimant "since his 18th birthday." Dr. Hersh discerned from his test data and the psychologist's personal observations that claimant has the capacity for complex thinking, albeit bizarre, as well as for "real sophisticated vocabulary." On claimant's use of vocabulary, Dr. Hersh made the observation beyond the referencing of the mentally retarded population because claimant used works the general population does not use. Despite claimant's extremely poor vision and his active delusional thinking, the psychologist found claimant to perform very well on nonverbal subtests for IQ under the Wechsler Abbreviated Scales of Intelligence. According to Dr. Hersh, claimant's overall score fell within the borderline to low average ranges. Such level of intelligence as displayed by claimant does not suggest mental retardation. Dr. Hersh opined that claimant's current difficulties do "not reflect a Developmental Disability and treatment." And in service agency's psychologist's opinion the most prospective efficacious mental health treatment for claimant "is not one that would be appropriate for a person" with mental retardation. Dr. Hersh persuasively showed that the Dr. Rozendal's psychological tests and opinions in 2004 were of questionable soundness that claimant is mentally retarded. Dr. Hersh was unequivocal in his opinions that claimant is not substantially handicapped by Autism, mental retardation, or a condition requiring treatment similar to that required by persons with mental retardation.

Claimant's Evidence

10. At the hearing of this matter, claimant's friend and SSI payee, Russell K., declined to give testimony under oath. His arguments on behalf of claimant offered no new information to refute the findings and determinations made by service agency's professional personnel that claimant did not suffer from mental retardation or other conditions that would make him eligible to receive regional center services and supports.

Reasonable Conclusion by Service Agency Professionals

11 At the hearing of this matter, service agency called three witnesses, Ms. Dolar, Dr. Keyes-Osantowski , and Dr. Hersh, who provided sound, cohesive overviews of the deliberate and consciousness efforts by the service agency to assess claimant in the context of an application to be eligible to be enrolled with service agency. The findings and determinations made by those professionals, who were retained by service agency, were reasonable and persuasive regarding claimant's current disorders and maladies. Moreover, the well-presented arguments of Dr. Boyd supported the reasonable determination made by service agency in this matter, and that such determination was neither arbitrary nor capricious.

12. There is no question that Claimant has significant and substantial challenges and that he would benefit from some public service programs, such as mental health counseling. But claimant's friend and SSI supplement income payee, Russell K., did not present competent documents, or call expert witnesses, to establish that claimant is afflicted with mental retardation or a condition similar to mental retardation within the meaning of the "Fifth Category" of disorders for which Lanterman Services may be provided to the affected individual. Rather the weight of evidence supports a conclusion that claimant's challenges pertain to psychiatric impairments; long-term abuse of alcoholic beverages, and several incidents of head trauma that occurred after he attained 18 years of age. The evidence does not support a determination that claimant is qualified under the Lanterman Act to receive services and supports.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

> The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . . .
>
> An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation

of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as follows:

> 'Developmental disability' means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

5. Title 17, California Code of Regulations, section 54000 provides:

> (a) 'Developmental Disability' means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.
>
> (b) The Developmental Disability shall:
>
> (1) Originate before age eighteen;
>
> (2) Be likely to continue indefinitely;
>
> (3) Constitute a substantial disability for the individual as defined in the article.
>
> (c) Developmental Disability shall not include handicapping conditions that are:
>
> (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have

become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

6. Title 17, California Code of Regulations, section 54001 provides:

(a) 'Substantial disability' means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;
(B) Learning;
(C) Self-care;
(D) Mobility;
(E) Self-direction;
(F) Capacity for independent living;
(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other

> interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.
>
> (c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.
>
> (d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

Overview

7. Claimant appears to have significant challenges. He has a very supportive friend in Russell K., who is troubled by claimant's behavior and chronic difficulties in every day settings. The evidence, however, did not support a finding that claimant has a developmental disability, which had a definite onset before he was 18 years of age, that qualifies him for services under the Lanterman Act.

Ultimate Determination

8. Claimant is not eligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act.

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ORDER

Claimant Paul A's appeal from the determination by Golden Gate Regional Center that he is not eligible for regional center services is denied.

DATED: March 22, 2011

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PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (b)(2). Each party is bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.